

**Monday, May 16, 2016**

The following action minutes are listed as they were acted upon by the Planning Commission and as listed on the agenda for the Regular Meeting of 9:00 AM, together with the maps and staff reports attached thereto and incorporated therein by reference.

Hearings are advertised for 9:00 a.m. Hearings generally proceed in the order listed, unless changed by the Planning Commission at the meeting.

**ROLL CALL:**

**PRESENT:** Jim Irving; Kenneth Topping; Eric Meyer; James Harrison; and Don Campbell

**ABSENT:** None

**PUBLIC COMMENT PERIOD**

1. Members of the public wishing to address the Commission on matters other than scheduled items may do so at this time, when recognized by the Chairman. Presentations are limited to three minutes per individual.

Eric Greening: speaks.

**PLANNING STAFF UPDATES**

2. This is the time set for Planning Staff updates.

Don Campbell: overviews the Order of the Day.

**HEARINGS: (Advertised for 9:00 a.m.)**

3. Continued hearing to consider a request by the PHILLIPS 66 COMPANY for a Development Plan/Coastal Development Permit to allow the modification of the existing rail spur currently on the southwest side of the Santa Maria Refinery in order to allow for the import/unloading of crude oil at the refinery via train. The rail spur project includes a 6,915-foot long rail spur, an unloading facility, onsite pipelines, replacement of coke rail loading tracks, the construction of five parallel tracks with the capacity to hold a 5,190-foot-long unit train consisting of 80 tank cars (60 feet each), two buffer cars (60 feet each), and three locomotives (90 feet each), and accessory improvements outlined in more detail below in the staff report as well as the Final Environmental Impact Report (FEIR). The site is in the South County Coastal Planning Area, in the Industrial Land Use Category, and is located at 2555 Willow Road, approximately 3 miles west of the Nipomo Urban Reserve Line and approximately 3,300 feet from the nearest residence. Also being considered is the Final Environmental Impact Report. CONTINUED FROM 2/4, 2/5, 2/25, 3/11, and 4/15/16.

County File Number: DRC2012-00095

Assessor Parcel Numbers: 092-401-011, 092-401-013, 092-401-005, & 092-411-005

Supervisory District: 4  
Project Manager: Ryan Hostetter  
Recommendation: Denial

Commissioners: disclose their ex-parte contacts.

Ellen Carroll, Environmental Coordinator: introduces Dr. Penny Borstien, County Health Administrative Officer, and Larry Allen from the Air Pollution Control District.

Ryan Hostetter, Project Manager: makes introductions of staff team, and EIR consultant team. Overviews a list of questions received for the Commission to deliberate.

Greg Chittick, MRS (prepared the air quality section of the EIR): shows a Power Point presentation on dust zones, and cancer health risks.

Commissioners: ask questions of Mr. Chittick, especially in terms of diesel fumes relative to the silica contribution.

Don Campbell: asks if the overhead map depicting dust zones & cancer health risks includes the additional trucks should this proposal be denied with Mr. Chittick stating this map did not.

Commissioners: discuss permitting requirements for truck loading and unloading should this proposal be denied.

James Harrison: would like to know the amount of diesel particulates a truck would dispel vs a trail with Mr. Chittick responding.

Commissioners: begin with questions for Ms. Penny Borstien, County Health Administrative Officer, in regards to health impact conditions.

Larry Allen, Air Pollution Control District: answers questions regarding air quality especially in terms of measurements of particulate matter in regards to the Dunes area.

Commissioners: discuss notification to possible home buyers of the dust situation in the area of the Mesa and Monarch Dunes with Mr. Allen responding.

Ryan Hostetter, Project Manager: introduces Bill Henry from SWCA who discusses Agricultural Resources in terms of the EDC comments and the County's response to them.

John Pearson: discusses and shows a presentation regarding liquefaction at the SMR site and the potential thereof.

Ryan Hostetter, Project Manager: addresses visual impact questions and shows a Power Point presentation.

Commissioners: discuss buffer zones in terms of location of such on the site of the proposal with Ms. Hostetter clarifying the buffers as separation of uses.

John Pearson: addresses the responsibility for oil spill cleanup remediation via a Power Pint presentation.

Greg Chittick, MRS: provides responses to questions proposed earlier.

Commissioners: begin their deliberations beginning with ESHA (Environmentally Sensitive Habitat Areas -in terms of making findings for denial and ESHA.

Ken Topping: suggests a straw poll of commissioners relative to their opinions of the outcome of this proposal absent a vote.

Jim Harrison: discusses safety issues, accidents, and research he made regarding accidents and his findings for such -in terms of train derailments within the last 20 years. Feels this is a good proposal and provides reasoning for voting against a denial for the proposal, and for approval of this proposal.

Eric Meyer: discusses benefits and risks coming from this proposal and how this affects his decision. Explains his vote will be NO and provides reasoning.

Ken Topping: discusses research of his notes and testimony from No. 83 through 120 or so, in which he found a perspective for a constituent in terms of compromise. Finds it difficult to suggest a compromise in this case due to safety impacts. Reads into the record language of goals and policies of SLO county. Speaks to concern for small probability to high impact of an event which could cause catastrophe. Also speaks to health concerns in the area, and for this reason he will vote against proposal.

Jim Irving: comments on his research of proposal in terms of how to condition proposal, the commission's pervue of this proposal, court cases he has researched, risks of safety and health impacts related to this site, ESHA areas, and proposes conditions of approval for the proposal. and for that reasoning he will be voting for an approval. Feels with appropriate conditions of approval this proposal could be a benefit and provides reasoning for such.

Results of straw pole: Jim Harrison is in favor of an approval of this proposal. Eric Meyer agrees with staff's recommendation of denial of this proposal. Ken Topping is also for staff's recommendation to deny this proposal. Jim Irving: is for approval of this proposal. Don Campbell is in favor of an approval for this proposal.

Whitney McDonald, County Counsel: explains applicant's intent to modify request to 3 trains per week in regards to the commission's vote today. Recommends Public Comment be re-opened should conditions of approval be drafted.

Ellen Carroll, Environmental Coordinator: suggests a continuance of this hearing at which time conditions of approval and findings will be provided from the direction of the commission today.

Ken Topping: suggests the basic CEQA findings should also be studied and the interpretation of the General Plan. Would like to start with those this afternoon.

Don Campbell: Summarizes EIR in terms of amount of tank cars traveling the railways.

Ellen Carroll, Environmental Coordinator: overviews what the Commissioners need to address to give direction to staff as to conditions of approval, etc. Reports the date the hearing can be

continued to with all commissioners present is September 22, 2016.

Commissioners: make suggestions as to conditions of approval for this proposal.

Jim Irving asks for case law or chance if the applicant changes their project as they have including hypotheticals, can it be changed by a court. And could a court expand a project, or could project be conditioned by the court.

Whitney McDonald, County Counsel: explains why the court could change orders set by the commission or Board of Supervisors.

Commissioners: hypothesize on how much the court can interfere with the Commission's decisions, and present hypotheticals regarding operations by Union Pacific Rail Road (UPRR) and Phillips 66.

Thereafter on **Motion by:** Eric Meyer, **Seconded by:** Ken Topping, and on the following vote:

COMMISSIONERS:	AYES:	NOES:	ABSTAIN:	RECUSE:
Harrison, James		x		
Irving, Jim		x		
Campbell, Don		x		
Meyer, Eric	x			
Topping, Ken	x			

The Commission denies this proposal. Motion fails 3-2.

Commissioners: deliberate project proposal.

Jim Anderson, Maintenance Superintendent, Phillips 66: addresses Comm. Meyers concerns based on unloading three trains per week.

Ken Topping: states the project definition should be revised precisely and provides reasoning.

Jocelyn Thompson, attorney representing Phillip 66: states examples can be provided by other jurisdictions proving Phillips consistency in following standards.

Commissioners and Ms. Thompson: discuss mitigations for 3 trains as opposed to 5 especially in regards to the project description and whether or not the description should be re-written.

Don Campbell: asks Mr. Anderson if there is a monitoring process to keep track of conditions with Mr. Anderson providing reasoning, and tracking procedures that are in place.

Jim Irving: begins directing staff with what he would like to see when this comes back; i.e. clear project description, ownership of locomotives by Phillips 66, tanker cars to meet the maximum standards, tanker cars which are allowed to sit; mitigation for lighting along the spur to be diminished during the evening; extension of the berm height for vegetation screening; bonding for fire & life; requirement of vertical coastal access.

Ken Topping: would like to know if the conditions suggested would require a re-circulation of

an EIR with County Counsel responding. Discusses the component of vertical access in terms of to what extent are we to honor it.

Joceclyn Thompson: Points out pre emptied mitigations; AQ2A in terms of the contract between railroad & customer and mitigations for the emissions. AQ3. AQ4A all would be preempted for the same reasons. AQ6, greenhouse gas emissions. AQ8 in terms of definition of term inconsistency; BIO 11, requiring a contract between P-66 & Union Pacific; CR6 requirement between railroad & applicant in terms of cultural resources; HM2A mitigation dealing with railcars -2 statues have pre emptio provisions; HM2B requiring route analysis ICCTA pre empts routing regulations; HM2C Positive train control -contract between applicant & railroad pre emptied by the ICCTA. N-2A previously flagged by the applicant and will be in written comments. PS11; PS4B; PS4C funding for first response agencies pre emptied by regulations by FIMSA; PS4D contracts between applicant & railroad; PS4E contact information -covered in federal regs; TR4 requiring applicant to work with Union trains pre emptied; and WR3 cross references BIO 11. States these pre emptied mitigations are brought forth to guide the commissions against imposing regulations that are already pre emptied.

Eric Meyer: suggests HM2b be revised to indicate highest level of safety.

Ken Topping: referring to Chapter 4 Pg. 4.8-5 would like to know why the Monarch Dunes project was not shown as residential; has concerns that this will take longer than the day this is continued to with Ms. Carroll explaining there will be further dates researched for availability to discuss this proposal.al, with Ms. Hostetter stating this will be researched and brought back at the next meeting.

There being no further business to discuss Mr. Irving makes the following motion.

Thereafter on **Motion by:** Jim Irving, **Seconded by:** James Harrison, and on the following vote:

COMMISSIONERS:	AYES:	NOES:	ABSTAIN:	RECUSE:
Harrison, James	x			
Irving, Jim	x			
Campbell, Don	x			
Meyer, Eric	x			
Topping, Ken	x			

The Commission continues this item to September 22, 2016.

Thereafter on **Motion by:** James Harrison, **Seconded by:** Eric Meyer, and on the following vote:

COMMISSIONERS:	AYES:	NOES:	ABSTAIN:	RECUSE:
Harrison, James	x			
Irving, Jim	x			
Campbell, Don	x			
Meyer, Eric	x			
Topping, Ken	x			

The Commission accepts all testimony and correspondence entered into the record.

Thereafter on **Motion by:** James Harrison, **Seconded by:** Eric Meyer, and on the following vote:

COMISSIONERS:	AYES:	NOES:	ABSTAIN:	RECUSE:
Harrison, James	x			
Irving, Jim	x			
Campbell, Don	x			
Meyer, Eric	x			
Topping, Ken	x			

The commission adjourns.

**ADJOURNMENT: 3:15 PM**

Respectfully submitted,  
Ramona Hedges, Secretary  
San Luis Obispo County Planning Commission